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MAINE PROSECUTORS ASSOCIATION SHIRA BURNS, EXECUTIVE DIRECTOR

**"An Act to Prohibit the Sale or Provision of Self-administered
Sexual Assault Forensic Evidence Collection Kits"
Before the Joint Standing Committee on Judiciary
Public Hearing Date: February 26, 2025
Testimony in Support of LD 412**

Senator Carney, Representative Kuhn and members of the Joint Standing Committee on Judiciary. My name is Shira Burns and I represent the Maine Prosecutors Association. I am here to testify in support of LD 412.

Self-collected sexual assault kits first came into the public focus in 2019 and were offered as tools of self-empowerment for victims of sexual violence, enabling victims to collect and preserve evidence of a sexual assault without receiving care from a Sexual Assault Forensic Examiner (SAFE) or other trained healthcare provider. At the start of the COVID-19 pandemic, interest once again rose in the utilization of such kits as a way to avoid overcrowded hospitals and minimize exposure to the virus. However, prosecutors immediately around the country expressed widespread concern in response to the proliferation of self-collected kits, pointing out that such kits do not provide a substitute for professional medical care and that the companies producing the kits are charging victims for a service otherwise offered free of charge.

Self-administered exams limit comprehensiveness of evidence collected. An exam often involves the preservation of evidence through the use of photographs, which can be quite sensitive to lighting, angle, and perspective conditions. Victims self-administering self-collected kits generally do not have the training, technical skills, and experience required to properly collect evidence following a sexual assault.

SAFEs provide healthcare treatment to sexual violence patients and collect and preserve biological evidence. Healthcare professionals follow well-established protocols to limit and prevent the risk of cross-contamination in healthcare facilities. SAFEs are able to document these steps through SAFE reports as well as testimony to preempt any concerns about exam conditions. In a similar vein, evidence collected from self-administered exams may open the door to chain of custody issues. For healthcare providers collecting evidence during SAFE exams, standard practices and protocols are focused on maintaining the integrity of the evidence and documenting transfer, which preempts or negates defense attacks on chain of custody. With self-collected kits, chain of custody becomes yet another potential area upon which the defense can cross-examine the victim.

Self-administered exams may also prevent prosecutors from presenting the full spectrum of evidence of the sexual assault crime at trial. Prosecutors may have strong legal arguments to admit victims' statements to a healthcare provider during a SAFE exam under the medical hearsay exception in our Maine Rules of Evidence. These statements, often impacted by acute or longstanding trauma, can be raw and revealing and used to corroborate a victim's testimony at trial. However, such statements may only be admitted if they were given to a healthcare provider and made for the purpose of healthcare treatment or diagnosis. The absence of a healthcare provider with a self-collected kit would remove the medical statement hearsay exception from a prosecution, eliminating the opportunity for the jury to hear powerful evidence

For these reasons, the Maine Prosecutors Association is in support of LD 412.